



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: May 01, 2020

TIME: 12:27 PM

WSR 20-10-066

Agency: Department of Revenue

- Original Notice
- Supplemental Notice to WSR \_\_\_\_\_
- Continuance of WSR \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 19-11-114 ; or
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or
- Proposal is exempt under RCW \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) WAC 458-20-17802 (Rule 17802) titled, Collection of use tax by county auditors and department of licensing – Measure of tax. Rule 17802 provides a framework for county auditors and the department of licensing to determine and collect use tax imposed by chapter 82.12 RCW when a person applies to transfer the certificate of title of a vehicle acquired without the payment of retail sales tax. As part of the process, an automated valuing system is used to verify the purchase price of the vehicle represents the true value.

A presumption is made in the rule that the purchase price represents the true value of the vehicle if one of the following conditions is met:

- (a) the vehicle's average retail value (as determined by the automated valuing system) is less than \$5,000, or
- (b) the vehicle's purchase price is not more than \$2,000 below than the vehicle's average retail value (as determined by the automated valuing system).

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
June 11, 2020	10:00 A.M.	Conference Room 114A 6400 Linderson Way SW Tumwater, Washington 98501	Due to the current <i>Stay Home, Stay Safe</i> order, this meeting may be held telephonically only. The Department will announce if the hearing changes to telephone-only.

**Date of intended adoption:** June 22, 2020 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Brenton Madison  
 Address: PO Box 47453, Olympia, WA 98504-7453  
 Email: BrentonM@dor.wa.gov  
 Fax: 360-534-1606  
 Other:  
 By (date) June 10, 2020

**Assistance for persons with disabilities:**

Contact Julie King or Renee Cosare  
 Phone: (360)704-5733 or (360) 704-5734  
 Fax:  
 TTY: 800-833-6384  
 Email:  
 Other:  
 By (date) \_\_\_\_\_

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Department proposes to update Rule 17802 to adjust the conditions discussed above. Specifically, for condition (a), the Department proposes increasing the threshold from \$5,000 to \$7,500. Therefore, if the vehicle's average retail value (as determined by the automated valuing system) is less than \$7,500, the purchase price will be used as the measure of the use tax. For condition (b), the Department proposes changing the amount from \$2,000 to 20%.

**Reasons supporting proposal:** RCW 82.12.045(6) authorizes the Department to promulgate rules for the administration and collection of use tax on vehicles. Periodically, the Department has increased the thresholds in the rule in response to the effects of inflation, and to reduce the number of transactions where the Department or its duly authorized agents are unable to presume the reported purchase price is also the taxable value of the vehicle. These changes are expected to ease administrative burdens for tax collectors and vehicle owners.

**Statutory authority for adoption:** RCW 82.32.300, 82.01.060(2), and 82.12.045.

**Statute being implemented:** None.

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** (person or organization) Department of Revenue

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Brenton Madison	6400 Linderson Way SW, Tumwater, WA	(360) 534-1583
Implementation:	John Ryser	6400 Linderson Way SW, Tumwater, WA	(360) 534-1605
Enforcement:	John Ryser	6400 Linderson Way SW, Tumwater, WA	(360) 534-1605

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
Phone:  
Fax:

TTY:  
Email:  
Other:

No: Please explain: This rule is not a significant legislative rule as defined by RCW 34.05.328.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of exemptions, if necessary: .

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. This rule proposal do not impose any new performance requirement, administrative burden, or cost on any small business not already imposed by statute

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

Date: May 1, 2020

Name: Atif Aziz

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 16-12-075, filed 5/27/16, effective 6/27/16)

**WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax.** (1) **Introduction.** The department of revenue (department) has authorized county auditors and the department of licensing to collect the use tax imposed by chapter 82.12 RCW when a person applies to transfer the certificate of title of a vehicle acquired without the payment of sales tax. See RCW 82.12.045. This rule explains how county auditors, their subagents, and the department of licensing determine the measure of the use tax. This rule does not relieve a seller registered with the department of the statutory requirement to collect sales tax when selling tangible personal property, including vehicles. RCW 82.08.020 and 82.08.0251. The use tax reporting responsibilities of Washington residents in other situations and the general nature of the use tax are addressed in WAC 458-20-178 (Use tax). The application of tax to vehicles acquired by Indians and Indian tribes is discussed in WAC 458-20-192 (Indians—Indian country).

Vehicle licensing locations and information about vehicle titles and registration are available from the department of licensing on their website at: [dol.wa.gov](http://dol.wa.gov). This information is also available by contacting the local county auditor's office listed in the government pages of a telephone directory.

(2) **What is use tax based on?** For purposes of computing the amount of use tax due, the value of the article used is the measure of tax. The value of the article used is generally the purchase price. If the purchase price does not represent the true value of the article used, the value must be determined as nearly as possible according to the retail selling price at place of use of similar vehicles of like quality and character. RCW 82.12.010.

(3) **Use of automated system to verify measure of tax.** When a person applies to transfer the certificate of title of a vehicle, county auditors, their subagents, or the department of licensing must verify that the purchase price represents the true value. In doing so, county auditors, their subagents, or the department of licensing compare the vehicle's purchase price to the average retail value of comparable vehicles using an automated valuing system. The automated valuing system identifies the average retail value using a database that is provided by a regional industry standard source specializing in providing valuation services to local, state, and federal governments, and the private sector.

In limited situations, the automated valuing system's database may not provide the average retail value for a vehicle. For example, the automated valuing system's database does not provide average retail value information for collectible vehicles or vehicles that are over twenty years of age. In the absence of an average retail value, county auditors, their subagents, or the department of licensing will determine the true value as nearly as possible according to the retail selling price at place of use of similar vehicles of like character and quality. To assist in this process, the department of revenue and the department of licensing may approve the use of alternative valuing authorities as necessary.

(4) **What happens when the purchase price is presumed to represent the true value?** County auditors, their subagents, or the department of

licensing will use the purchase price to compute the amount of use tax due when the purchase price represents the vehicle's true value. County auditors, their subagents, or department of licensing will presume the purchase price represents the vehicle's true value if one of the following conditions is met:

(a) The vehicle's average retail value, as provided by the automated valuing system, is less than ~~\$(5,000)~~ 7,500.

For example, a person buys a vehicle for \$2,800. The automated valuing system indicates that the vehicle's average retail value is \$4,900. The purchase price is presumed to represent the vehicle's true value because the average retail value is less than ~~\$(5,000)~~ 7,500.

(b) The vehicle's purchase price is not more than ~~\$(2,000)~~ 20 percent below the average retail value as provided by the automated valuing system.

For example, a person buys a used vehicle for ~~\$(10,000)~~ 17,000. The automated valuing system indicates the vehicle's average retail value is ~~\$(11,500)~~ 20,000. When compared to the average retail value, the purchase price is not more than ~~\$(2,000)~~ 20 percent (\$4,000) below the average retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(5) **What happens when the purchase price is not presumed to represent the true value?** If the vehicle's purchase price is not presumed to be the true value as explained in subsection (4) of this rule, a person may remit use tax based on the average retail value as indicated by the automated valuing system or substantiate the true value of the vehicle using any one of the following methods.

(a) **Industry-accepted pricing guide.** A person applying to transfer a certificate of title may provide the county auditor, a subagent, or the department of licensing with documentation from one of the various industry-accepted pricing guides. The value from the industry-accepted pricing guide must represent the retail value of a similarly equipped vehicle of the same make, model, and year in a comparable condition. The purchase price is presumed to represent the vehicle's true value if the purchase price is not more than \$2,000 below the retail value.

For example, a person buys a vehicle for ~~\$(3,500)~~ 6,500. The automated valuing system indicates that the vehicle's average retail value is ~~\$(5,700)~~ 8,700. An industry-accepted pricing guide shows that the retail value of a similarly-equipped vehicle in a comparable condition of the same make, model, and year is ~~\$(5,000)~~ 8,000. When compared to the retail value established by the industry-accepted pricing guide, the purchase price is not more than \$2,000 below the retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(b) **Declaration of buyer and seller.** A person applying to transfer a certificate of title may provide to the county auditor, a subagent, or the department of licensing a Declaration of Buyer and Seller Regarding Value of Used Vehicle Sale (REV 32 2501) to substantiate that the purchase price is the true value of the vehicle. The declaration must be signed by both the buyer and the seller and must certify to the purchase price and the vehicle's condition under penalty of perjury. The department may review a declaration and assess additional tax, interest, and penalties. A person may seek review of an assessment to the department as provided in WAC 458-20-100 (Informal administrative reviews).

The declaration is available on the department's website at dor.wa.gov. It is also available at all vehicle licensing locations, department's field offices, or by writing:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

(c) **Written appraisal.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a written appraisal from an automobile dealer, insurance or other vehicle appraiser to substantiate the true value of the vehicle. If an automobile dealer performs the appraisal, the dealer must be currently licensed with the department of licensing dealer services division or be a licensed vehicle dealer in another jurisdiction.

The written appraisal must appear on company stationery or have the business card attached and include the vehicle description, including the vehicle make, model, and identification number (VIN). The person performing the appraisal must certify that the stated value represents the retail selling price of a similarly equipped vehicle of the same make, model, and year in a comparable condition. The department may review an appraisal and assess additional tax, interest, and penalties. A person may seek review of an assessment to the department as provided in WAC 458-20-100 (Informal administrative reviews).

(d) **Declaration of use tax.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a Declaration of Use Tax (REV 32 2486e) to substantiate the true value of the vehicle. An authorized employee of the department must complete the declaration. Determining the true value may require a visual inspection that is not available at all department locations.

(e) **Repair estimate.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a written repair estimate, prepared by an auto repair or auto body repair business. This estimate will then be used to assist with determining the true value of the vehicle. The written estimate must appear on company stationery or have the business card attached. In addition, the written estimate must include the vehicle description, including the vehicle make, model, and identification number (VIN), and an itemized list of repairs. The department may review an appraisal and assess additional tax, interest, and penalties. A person may seek review of an assessment to the department as provided in WAC 458-20-100 (Informal administrative reviews).

The purchase price is presumed to represent the true value if the total of the purchase price and the repair estimate is not more than ~~(( $\$2,000$ ))~~ 20 percent below the average retail value. For example, a person purchases a vehicle with extensive bumper damage for ~~(( $\$1,700$ ))~~ 13,700. The automated valuing system indicates that the vehicle's average retail value is ~~(( $\$6,000$ ))~~ 18,000. An estimate from an auto body repair business indicates a cost of \$2,500 to repair the bumper damage. The purchase price is presumed to represent the vehicle's true value because when the total of the purchase price and the repair estimate ~~(( $\$1,700$ ))~~ 13,700 + \$2,500 = ~~(( $\$4,200$ ))~~ 16,200 is compared to the average retail value, the total is not more than ~~(( $\$2,000$ ))~~ 20 percent below the average retail value ~~(( $\$6,000$ ))~~ 18,000.